

[REDACTED]

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

IN THE MATTER OF:

The Special Education of CB a minor, by)	
And through his Parents,)	
Student,)	Case No. 2022-DP-0161
)	
)	Mary Jo Strusz
)	Impartial Due Process Hearing Officer
v.)	
)	
[REDACTED] Community Unit)	
School District No. [REDACTED])	
District.)	

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., the Illinois School Code, 105 ILCS 5/14-8.02a, and their respective implementing regulations.

BACKGROUND

Petitioners are the parents of CB ("Student"), a seventeen-year-old student, who was unilaterally placed at a residential program, [REDACTED] in Mapleton Utah by the parents on November 30, 2021, after giving proper, written ten-day notice to the District. Student is currently enrolled in 11th grade at [REDACTED]. Although [REDACTED] was formerly an Illinois State Board of Education ("ISBE") approved residential program, it was not approved on the date of placement.

Student was found eligible for IEP special education services in Student's early elementary years. Student lived in Ireland from 2012 to 2014. When Student moved back to [REDACTED] eligibility for special education was reinstated. Student qualified for special education service due

to Student's ADHD diagnosis. Student's eligibility for IDEA services, as of 2019, was emotional disability (primary) and Other Health Impairment (secondary). An IEP was developed for Student on December 15, 2021, and Student's most recent IEP was March 31, 2022.

Petitioner filed a due process complaint against the District on February 14, 2022. This Hearing Officer ("Strusz") was appointed to preside over the initial due process complaint on February 23, 2022.

On April 22, 2022, a prehearing conference was held. The conference was conducted by Zoom™ video conferencing from 3:00 p.m. to 3:36 p.m. Participating in the conference were: Strusz; [REDACTED] (" [REDACTED] and [REDACTED] ([REDACTED] Attorneys for Parents; and [REDACTED] (" [REDACTED] Attorney for the District.

The parties discussed the following matters:

1. Initially, the parties elected to participate in mediation. The mediation was cancelled by agreement of the parties. The parties are free to enter into settlement discussions and an agreement at any time and nothing in this order should be interpreted as prohibiting any settlement discussions. It was agreed that the 45-day timeline on the Complaint started to run on March 27, 2022. The parties have agreed to extend the 45-day decision date to accommodate the hearing and decision period. The joint motion to continue was filed on April 8, 2022, and the 45-day decision period was continued to May 31, 2022, by Order dated April 8, 2022.
2. Parents assert that the only placement appropriate and available for the Student is [REDACTED] a non-ISBE approved residential facility. Student is attending [REDACTED] since November 16, 2021, and Parents assert Student is receiving educational benefit.
3. The parties agree that this Student requires a residential placement. However, due to his unique needs, the District has been unable to locate an ISBE-approved private residential treatment program that is appropriate and available to meet this Student's needs. At this time, only a private, non-ISBE approved residential treatment program, identified by Parents, has been determined to be available and appropriate to meet Student's needs. This program located in Utah, has accepted Student and has been delivering appropriate services to the Student since November 16, 2021. However, as the facility is not ISBE approved, the District is unable to place the Student at that facility. Due to the unique needs of this Student, the safety of the Student, Parents, and those supporting the Student is a significant issue which presents a crisis for both Parents and the District.
4. The issues are limited to those raised in the Complaint and agreed upon during the prehearing conference. The undersigned has determined that she has the

authority to hear the issues listed below and grant the relief sought by Parent.

The Prehearing Disclosures were filed as joint exhibits on April 21, 2022, no individual disclosures were provided.

The issues, requested relief, and defenses being presented for determination are as follows:

THE ISSUES CERTIFIED FOR HEARING IN THIS CASE:

Issue 1: Whether the District made a FAPE available to Student in a timely manner prior to Student's unilateral placement at [REDACTED] on November 30, 2021? And if not:

Issue 2: Whether the Parents' unilateral placement of Student at [REDACTED] a non-ISBE approved residential facility, provides educational instruction specifically designed to meet the unique needs of Student, supported by such services as are necessary to permit Student to benefit from the instruction and receive a FAPE.

Districts Response: No response was filed in this case.

RELIEF REQUESTED:

- A. A finding in favor of the Parent on the above issues;
- B. Placement of Student at [REDACTED] a non-ISBE approved facility, beginning November 30, 2021;
- C. Reimbursement to Parents for any monies advanced for placement of Student at [REDACTED] and [REDACTED];
- D. Prospective funding, placement, and transportation to [REDACTED] for the remainder of the 2021/2022 school year, extended school year 2022, and for the 2022-2023 school year.
5. The Parents opted for a closed hearing. The Due Process Hearing was held on May 3, 2022. The exhibits were admitted into evidence and the record was closed on May 4, 2022. Ms. [REDACTED] and Ms. [REDACTED] of [REDACTED] & Cleary, LLC represented the Parents. Ms. [REDACTED] of Robbins Schwartz represented the District. The Parents and District presented witness affidavits which were admitted evidence (IHO Exhibits 23,24,25, 26). The Parents and District presented the following Joint Exhibits (JE): Exhibits Records 001-483; 0485-

0615; 0781-0785; 0800-0826; and 1098, which were admitted into evidence. This matter proceeded as a largely stipulated matter. A Joint Stipulations of Fact document was admitted into evidence (IHO Exhibit #22). The Hearing Officer's Exhibits were: IHO Exhibits # 1-27. Parents and District presented a brief closing argument. Parents provided citations of the case law relied upon.

PARENTS' AND DISTRICT'S JOINT STIPULATIONS OF FACT

1. [Student] is a 17-year-old male whose parent/legal guardian resides within the geographical boundaries of the District and who is enrolled in the District. He is eligible for special education under the *Individuals with Disabilities Education Act* ("IDEA") categories of Emotional Disability (primary) and Other Health Impairment (secondary).
2. [Student] was initially found eligible for special education services in his elementary years and, upon his family's return to the United States from Ireland where they lived from 2012 to 2014, eligibility for special education services was reinstated. [Student] qualified for special education services due to his ADHD diagnosis. It should be noted that he also received a diagnosis of Oppositional Defiant Disorder when he was 8 years old and while living in Ireland.
3. [Student] has had longstanding social/emotional, mental health and behavioral struggles throughout his educational career. These struggles have included disciplinary issues in the educational setting, multiple hospitalizations resulting in missed days of school, frequent seeking out of staff support beyond scheduled minutes, missed instruction due to a need to "process" with staff, difficulties in the home and community settings, and ongoing suicidal ideation, suicide attempts, and self-injurious behaviors. The Parents have attempted to alleviate many of [Student's] symptoms on their own through repeated taking [Student] to the emergency room when necessary – which often resulted in hospitalization on the child/adolescent

- psychiatric unit, psychiatric intervention and medication management, and mental health treatment through a private therapist.
4. Over the summer of 2021, Parents placed [Student] at a residential treatment program, [REDACTED]. The Parents then moved [Student] to a wilderness program in Utah, where he remained for almost 80 days. Upon discharge, it was recommended that [Student] transition directly to a residential program.
 5. Parents explored several residential placements for [Student] including [REDACTED], [REDACTED], the [REDACTED] School, and [REDACTED], all of which are facilities and programs approved by the Illinois State Board of Education, but none of these facilities accepted [Student].
 6. On November 10, 2021, the Parents provided written ten-day notice to District [REDACTED] of their intent to unilaterally place [Student] at [REDACTED] in Springville, Utah on November 30, 2021. Their notice further informed District [REDACTED] of their intent to seek retroactive reimbursement from District [REDACTED] as well as prospective funding and placement of [Student] at [REDACTED] as well as transportation to/from [REDACTED].
 7. [Student] began attending [REDACTED] on November 16, 2022. Parents are not seeking to recover the costs of transporting [Student] to [REDACTED] or for the costs of his placement from November 16 through November 29, 2021.
 8. [Student] has had a number of disciplinary issues in the educational setting from elementary school through middle school and into high school. For example, on February 22, 2016, as a fifth grade student, [Student] was suspended for a day and a half for pushing and punching a student and holding scissors up to another student in a threatening manner. While in the eighth grade at [REDACTED] Middle School in District [REDACTED] [Student] was suspended for three days after threatening to “shoot up the school.” He has demonstrated struggles with attention and impulsivity as well as

regarding irritability and anger (e.g., yelling, slamming things, arguing with adults, deliberately doing things to annoy others, blaming others for his mistakes). While in high school, [Student] has been disciplined many times for various incidents including safety violations, threats, battery on a student, drug possession, and being under the influence while at school.

9. In April 2019, [Student] underwent a neuropsychological evaluation at [REDACTED] Services by [REDACTED] (hereinafter “Dr. [REDACTED] Psy.D., an Illinois licensed clinical psychologist. [Student] was referred for the evaluation following a suspension from school due to threatening to “shoot up” the school. Dr. [REDACTED] diagnosed [Student] with Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder.
10. In July 2019, [Student] began seeing a private therapist, [REDACTED] MS Ed, LCPC, CCTP (hereinafter Ms. [REDACTED] and continued to see her through August 2021. [Student] was referred to Ms. [REDACTED] by a therapist who worked with [Student] in an inpatient setting.
11. [Student]’s transition to high school in the fall of 2019 was challenging, and the COVID-19 pandemic disrupted his educational programming in the spring of 2020. Since he began high school, [Student] has struggled with appropriate peer and adult interactions, his social skills, self-regulation and work completion.
12. Since he began high school in the fall of 2019, [Student] has run away from school, been suspended from athletics, has had multiple police contacts in the home setting due to calling the police himself or having the police called on him, and has been psychiatrically hospitalized multiple times (both in-patient and out-patient).
13. On April 28, 2020, [Father] brought [Student] to [REDACTED] Hospital’s emergency department for a mental health evaluation due to [Student] having “suicidal thoughts without a specific plan.” [Student] had also begun cutting

himself about a week to a week and half prior, using a razor to cut himself several times on his left forearm. Following the evaluation in the emergency department, [Student] was admitted to the child/adolescent psychiatric unit and remained in-patient until discharge on May 11, 2020.

14. Records from a psych assessment conducted while [Student] was hospitalized reflect [Student] indicated he was “having suicidal thoughts or behavior,” had a history of self-injurious behavior, was admitted to the hospital following a suicide attempt, and had a suicide plan which was to hang himself or run into traffic.
15. Records from [REDACTED] Hospital also reflect that [Student] “struggles most with anger most of the time” and “school is [sic] been a struggle.” Records further reflect that [Student] had run away from his mother’s residence two to three weeks prior to the hospitalization following an argument, and that [Mother] had called the police about a year prior to the hospitalization after an argument which led to [Student] threatening his mother.
16. Records from this hospitalization reflect that [Student] struggled within the restrictive hospital setting. It was reported that [Student] was “defiant” and “aggressive,” “pushing and shoving furniture,” and “disruptive with peers and staff.” [Student] also punched walls and other items while in-patient.
17. When discussing his mental health history, [Student] explained to hospital staff that he remembers feeling extremely angry as early as four years old and had frequent tantrums even when he was 7 years old. Upon discharge, [Student] was diagnosed with Major Depressive Disorder, Severe; Disruptive Mood Dysregulation Disorder, and ADHD.
18. The discharge paperwork reflects that [Student] was referred to [REDACTED] Behavioral Health and had a follow up appointment scheduled for May 12, 2020. [Student] attended the [REDACTED] PHP for approximately eight (8) weeks, ending

- the school year in the hospitalization setting.
19. In April 2021, [Student] was psychiatrically hospitalized on an in-patient basis at [REDACTED] Hospital due to suicidal ideation with intent and depressive symptoms. [Student] told hospital staff that there is a gun in his father's home, locked in a safe, which he has attempted to open on multiple occasions but thus far has been unable to do. [Student] remained inpatient for eight (8) days and was discharged on April 20, 2021 with the diagnosis of Disruptive Mood Dysregulation Disorder.
 20. The [REDACTED] Hospital records reflect, "Patient reports that he has been having difficulties with depression and has been 'going downhill.' He reported that he frequently has suicidal thoughts and was even thinking of getting a gun that is in lock [sic] at home. He has also endorsed difficulties with feeling hopeless and helpless." In addition, the Initial Psychiatric Assessment reflects, "Pt states he has been having worsening thoughts of not wanting to be alive – 'contemplating my faith and hope. Giving up on trying. I want to quit, I can't take it anymore'. . .He says his thoughts are 'always negative.' 'I get really sad and don't want to get out of bed.' He says he couldn't get out of bed to get to school today. He feels lonely frequently."
 21. [Student]'s Student Assistance Counselor at [REDACTED] East High School maintained a tracking sheet for the 2020/2021 school year that contained data regarding whether [Student] came to meetings with the Student Assistance Counselor, how his mood was, how his behavior was, what his appearance was, and what the presenting problem was. There are twenty-three entries between January 13, 2021 and May 26, 2021. Of those twenty-three entries, many reflect social/emotional distress.
 22. District [REDACTED] school records reflect that [Student] underwent a "Risk of Harm"

- screening at school during the 2020/2021 school year after alleging that his father “beat him.” When screened for possible abuse, [Student] admitted to exaggerating about violence at home and said he was the one who escalated at his father’s residence and broke a door.
23. On another occasion during the 2020/2021 school year, [Student] underwent a “Risk of Harm” screening after being caught in possession of illegal substances. The screening reflects, “The student became highly reactive and anxious about how parents would react. The student, in a heightened state of emotional reactivity, made a suicidal statement.” As a result, [Student]’s outside therapist was contacted and spoke with [Student] for over twenty (20) minutes.
 24. From July 28, 2021 through mid-August 2021, [Student] attended Rosecrance, a residential treatment program in Illinois. The family was referred to Rosecrance by his private therapist, Shannon [REDACTED]. The initial assessment from Rosecrance indicated that [Student] has a history of suicidal ideation, suicide attempts, and depression. The Rosecrance records further reflect that [Student] reported the age of onset suicidal ideation was twelve and that he had a plan to shoot himself with his father’s gun or jump in front of a car. [Student] also reported to Rosecrance that he was raped when he was 15 years old.
 25. [Student] displayed significant social/emotional struggles while attending Rosecrance (e.g., eloping from the program, punching walls, refusing to participate in group therapy, engaging in physical altercations with peers, playing asphyxiation games with peers). As a result, the Parents removed [Student] from Rosecrance.
 26. Following [Student]’s discharge from Rosecrance, on August 27, 2021, the Parents placed [Student] in a wilderness program, Second Nature Wilderness Therapy (hereinafter “Second Nature”), in Duchesne, Utah. [Student] remained in the wilderness program for approximately 79 days.

27. While at Second Nature, [Student] underwent a comprehensive Psychological Assessment by [REDACTED] Ph.D., a Utah licensed clinical psychologist.
28. According to Dr. [REDACTED] evaluation, [Student] stated he began struggling with anxiety and with depression in eighth grade, and said he feels “overwhelmed frequently and overthinking most things.” According to Dr. [REDACTED] [Student] “reports experiencing his first panic attack in 2020, prior to attending inpatient treatment. [Student] recalls feeling disassociated, experiencing racing thoughts, and being unable to move. He indicates he does not typically hyperventilate during panic attacks, but instead experiences a slower heart rate, and racing thoughts. [Student] admits the panic attacks have intensified over time and reports he was experiencing one attack a month. Since being placed at Second Nature, [Student] has had two panic attacks.”
29. [Student] informed Dr. [REDACTED] that started to use drugs to self-medicate and further indicated that he has had one previous overdose attempt. The evaluation further reflects, “[Student] indicates he felt he experienced a constant rollercoaster of emotions and experienced frequent mood swings multiple times a day. He admits the mood swings seemed to come out of nowhere, often feeling extremely irritable and angry, and then happy almost instantly.”
30. Dr. [REDACTED] spoke with [Student]’s primary therapist at the wilderness program, [REDACTED] [REDACTED] (hereinafter “Mr. [REDACTED]”). The evaluation reflects, “Mr. [REDACTED] indicates that within wilderness therapy, [Student] actively tries to connect with others in his group, though struggles regularly. Mr. [REDACTED] notes that [Student] often believes that he understands the vibe of the social interactions around him, while others do not feel that he understands what is going on to the same degree that he does. At times, [Student] talks incessantly and struggles to recognize when he is talking over others or is frustrating others. Mr. [REDACTED] notes that through [Student] can be insightful, he still comes across as trying too hard. [Student] shows

- compromised interpersonal reciprocity regularly.”
31. Dr. [REDACTED] concluded, “From an emotional and behavioral standpoint, [Student] shows significant emotional distress that he struggles to manage effectively. His testing profile indicates significant tendencies towards behavioral reactivity, pushing against rules, and being oppositional and reactive in different ways. Furthermore, he shows frequent patterns of mood swings, anger, reactivity, and frustration that promote much of his behavioral reactivity. He struggles to trust the motives of others and often becomes overwhelmed with anxiety and worry in ways that likely feel paranoid or promote irrational thinking and tendencies towards impulsive and reactive behavior. He further shows underlying depressive patterns and tendencies towards feelings of sadness. His profile suggests that he tends to become behaviorally reactive and experience significant mood swings when sad or frustrated.”
32. Dr. [REDACTED] diagnosed [Student] with Autism Spectrum Disorder (high functioning, mild impairment); Attention Deficit Hyperactivity Disorder, Combined Presentation; Unspecified Anxiety Disorder; Unspecified Depressive Disorder; Cannabis Use Disorder, Moderate to Severe; Hallucinogen Use Disorder (Psychedelic Mushrooms), Moderate to Severe; and Parent-Child Relational Problem.
33. Dr. [REDACTED] concluded that [Student]’s placement in the wilderness program was “warranted and needed,” and recommended that [Student] transition to a residential therapeutic treatment program upon discharge from wilderness that “has significant structure as well as reliable and therapeutically sophisticated adult mentors, therapists, and therapeutic staff that can provide a safe emotional and physical space for him to engage effectively in needed treatment.” Dr. [REDACTED] recommended that the residential program be one that can provide [Student] with regular group and milieu therapy in social skills training, group and milieu therapy that focuses on

- communicating with others openly and honestly, individual therapy (to be provided at least weekly), psychiatric care, family therapy, and the ability to provide him with an overall health and wellness plan.
34. On October 29, 2021, [Student]’s private therapist, Ms. [REDACTED] authored a letter summarizing her work with [Student]. According to Ms. [REDACTED] “Since beginning treatment with [[Student]], he has had multiple inpatient stints, partial hospitalizations, intensive out-patient and an episode of residential treatment due to suicidal threats, risk of self-harm, threats of harm and action towards others, theft, running away, substance abuse as well as episodes of significant self-dysregulation requiring an inpatient stay to ‘stabilize’. . . . [Student] struggles with sensation seeking behaviors, despite multiple medication changes, intense individual, family and school supports, he fell victim to substance use to ‘manage his mood’ and ‘reduce his numbing feelings.’ [Student’s] mood was often unpredictable, erratic and volatile requiring extensive intervention to redirect the behaviors, often including law enforcement.”
35. An IEP meeting was scheduled for November 19, 2021. Two days prior to the meeting, due to staffing issues, District [REDACTED] canceled the IEP meeting and rescheduled it for November 29, 2021. On that date, an IEP meeting was convened with the Parents and District [REDACTED] for [Student]’s annual review, to discuss his special education needs, programming and placement, and the Parents’ ten-day unilateral placement letter.
36. At the start of the meeting, Parents indicated that they were concerned regarding [Student]’s repeated hospitalizations, lack of improvement, and the fact that he needs so many supports and services from school staff. Parents also expressed concern about the heightened level of his social/emotional issues, mental health struggles, and lack of improvement over time.
37. The school team members reviewed his present levels of performance and how

- [Student] was functioning at the end of the 2020/2021 school year. For example, school staff indicated that [Student] struggled with advocating for his needs and, “in moments of dysregulation,” [Student] struggled utilizing the skills he had been taught. When he was dysregulated, he struggled to do his work. His counselor also acknowledged that [Student] could get fixated and perseverate on things, including peer situations, and struggled to move on from a moment, event, thought, etc.
38. [Father] also described that [Student] struggles with his ability to organize and his executive functioning skills are severely lacking, he lacks the ability to focus because of his ADHD, he struggles with social initiation, [Student] processes after incidents occur but is unable to manage during the incident itself, he has a “hyper-focus,” which makes it impossible for him to do multiple things at once.
39. [Mother] also indicated that [Student’s] anxiety and depression symptoms resulted in the need for him to take multiple breaks during classes and his depressive symptoms impacted his ability to concentrate. Both parents indicated that they need to spend an inordinate amount of time trying to manage [Student’s] homework so that it is turned in; stating that the current system is not manageable.
40. The private evaluation conducted by Dr. [REDACTED] and his recommendations were summarized by the school psychologist at the IEP meeting.
41. On December 15, 2021, [Student’s] IEP team reconvened to finish the November 29 IEP meeting. The IEP team reviewed and determined [Student’s] eligibility to receive special education and related services and reviewed and revised his IEP, including his services and placement. The District offered placement in a non-public day school for [Student].
42. [Student] began attending [REDACTED] on November 16, 2021 and remains there to date.
43. On March 18, 2022, the District received records from [REDACTED] which

- included a Psychiatric Evaluation, Treatment Plan and Psychiatric Progress Notes.
44. On March 31, 2022, [Student's] IEP team met to consider the information provided from [REDACTED] and determined that [Student] required placement in a residential facility to meet his educational needs and receive a free appropriate public education.
45. [REDACTED] is a private, residential treatment center for boys between the ages of 13-18 who have behavioral and/or emotional issues (e.g., anxiety, depression, trauma, social struggles, low self-esteem, grief and loss, adoption/attachment issues, mood disorders, oppositional defiance disorder, learning disorders, non-verbal learning disability (including high functioning Autism Spectrum Disorder), ADHD, and parent-child relationship problems).
46. [REDACTED] provides an experiential campus, is twenty plus acres and includes a ranch. The students take part in equine therapy and horsemanship programs as well as a variety of outdoor activities, have access to a music studio, and can participate in various sports teams (e.g., basketball, flag football, wrestling, and cross-country running). All students participate in weekly ropes activities.
47. Individual, family, and group therapy are provided to all students at [REDACTED]. The treatment program includes master's and doctoral level clinicians and a full-time certified nurse. All students receive 1-2 hours of weekly individual therapy, group therapy and a minimum of one hour per week of family therapy.
48. Within the first week of a student's arrival, the student is evaluated by [REDACTED] [REDACTED] psychiatrist. The psychiatrist continues to meet with each student once a month. The certified nurse is on campus Monday – Friday and is on-call on nights and weekends.
49. [REDACTED] Academic Program is facilitated through Discovery Academy which is certified by the Utah State Board of Education and accredited by COGNIA.

50. [REDACTED] has appropriately licensed/certified teachers and related service personnel to provide special education and related services to [Student].
51. [REDACTED] uses a competency-based learning model. A student must pass all assignments, quizzes and tests with 80% proficiency before moving on to the next concept. Students begin a course at the beginning and move through the curriculum with teachers and student advisors' support. School is year-round and there are no semesters or summer vacations.
52. [REDACTED] LCSW is [Student]'s therapist at [REDACTED] [REDACTED] maintains two active licenses with the State of Utah: 1) License Number 274405-6006 for substance abuse counselor and 2) License Number 274405-3501 for licensed clinical social worker. [REDACTED] works with [Student] regarding individual, group and family therapy and sees [Student] multiple times per week.
53. Derry Brinley, D.O., is [Student's] psychiatrist at [REDACTED] Dr. Derry Brinley maintains two active licenses with the State of Utah: 1) License Number 274086-1204 for osteopathic physician and surgeon and 2) License Number 274086-8904 for osteopathic controlled substance. Dr. Brinley sees [Student] frequently (once every 30-45 days) for psychiatric assessment and for medication management.
54. The following are also therapists who work with [Student] at [REDACTED] in various capacities and who are all appropriately licensed/certified: 1) [REDACTED] (License Number [REDACTED], Therapeutic Recreation Specialist), 2) [REDACTED] [REDACTED] (License Number [REDACTED] Therapeutic Recreation Specialist), 3) [REDACTED] [REDACTED] (License Number [REDACTED], Clinical Mental Health Counselor), 4) [REDACTED] (License Number [REDACTED], Licensed Clinical Social Worker), 5) [REDACTED] (License Number [REDACTED], Psychologist), and 6) [REDACTED] (License Number [REDACTED], Clinical Mental Health Counselor).
55. [REDACTED] has developed a treatment plan for [Student] to address the

- following areas: a) parent-child relationship, b) ADHD, c) Mood Dysregulation, d) Depression/Suicidal Ideation, e) Anxiety, and f) Autism Spectrum.
56. [Student] takes the following classes at [REDACTED] English, History, Math and Science. He is in a classroom with a maximum of twelve students with two staff members.
 57. At [REDACTED] [Student] receives Individual Therapy sixty minutes per week, Family Therapy sixty minutes per week, Social Skills Therapy sixty minutes per week, Caseload Intervention Supports sixty to one hundred twenty minutes per week, Equine Therapy ninety minutes per week, Dialectical Behavior Therapy sixty minutes per week, Recreational Therapy ninety minutes per week and House Process Group Intervention sixty minutes per week. [REDACTED] LCSW, [Student]'s therapist at [REDACTED] reports that all of these therapeutic supports are essential to his treatment plan.
 58. Discovery provides an age-appropriate curriculum and delivers services in an age-appropriate setting. The curriculum includes a focus on building self-determination and self-advocacy skills as well as social/emotional development.
 59. [REDACTED] will provide the District with attendance records and the school calendar.
 60. [REDACTED] has been provided with a copy of [Student's] Individualized Education Program and is able to implement his IEP and provide [Student] with a free appropriate public education.
 61. Parents signed releases of information so that District [REDACTED] can send out referral packets to various residential programs.
 62. No Illinois State Board of Education approved residential placement had accepted [Student] before Parents placed him at [REDACTED]. To date, no current, appropriate Illinois State Board of Education residential program has accepted

- [Student].
63. The Parents and the District agree that [Student] requires placement in a residential treatment program designed to meet the academic, social/emotional, mental health, substance use, and functional needs of a student with an Emotional Disability and Other Health Impairment. The parties further agree that [REDACTED] is a residential program designed to meet [Student's] special education needs, agree that [REDACTED] can implement [Student's] IEP and agree that [REDACTED] can provide [Student] with a free and appropriate public education.
 64. On January 10, 2022, ISBE made a written commitment to address the lack of available residential placements, impacting families and districts across the state. They stated, "In order to address the residential placement issue, ISBE will take the following actions immediately: (1) reverse its position and reimburse school districts for placements of students in nonapproved residential facilities as a result of a due process hearing officer decision . . ." ISBE goes on to state, "In order to provide short-term relief, ISBE will . . . reimburse school districts for placements in non-approved facilities ordered by an ISBE appointed hearing officer, subject to necessary prorations after the school district pays twice the per capita rate for tuition" ISBE has further committed to notifying school districts of procedures for requesting reimbursement for due process hearing decisions.
 65. In total, Parents have paid \$66,241.64 to [REDACTED] through April 1, 2022.
 66. The total amount of tuition and room and board at [REDACTED] for each month is \$14,900.00.
 67. [Student] is entitled to prospective transportation to and from [REDACTED] pursuant to 23 Ill. Admin. Code §226.750, and consistent with the District's related guidelines. Transportation is also reimbursed by ISBE at a high rate for costs associated with ISBE-approved residential facilities and should be reimbursed in kind

in this matter.

CONCLUSIONS OF LAW

Based on the above Stipulated Facts, witness affidavits and documentary evidence introduced into evidence at hearing, the Conclusions of Law of this Hearing Officer are as follows:

1. The Individuals with Disabilities Education Act (IDEA) guarantees children with disabilities the right to a free, appropriate, public education (FAPE). 20 U.S.C. § 1412(a)(1). The provision of FAPE includes residential placement at no cost to the Parents if such placement is necessary to provide a child with a disability with special education and related services designed to meet such child's unique needs. 34 C.F.R. § 300.104. In the present case, there is no disagreement between the Parents and the District that residential placement is necessary for the Student to receive a FAPE. The District has been and remains ready and willing to meet its substantive obligation to provide the Student with a FAPE; but for the lack of any residential program on ISBE's approved list that is appropriate and available for the Student for enrollment, the District would be able to meet its substantive obligation. On February 2, 2022, ISBE submitted Emergency Rules to address the lack of available residential placements, impacting families and districts across the state as part of 23 Illinois Administrative Code 226.330(g)-(j). Effective February 4, 2022, the Emergency Rules provide as follows:

(g) A school district may place a student in a nonpublic special education facility ("facility") providing educational services, but not approved by the State Board of Education pursuant to 23 Ill. Adm. Code 401 or other applicable laws or administrative rules, provided that the State Board of Education provides an emergency and student-specific approval for placement. The State Board of Education shall promptly, within 10 days of the request, approve requests for emergency and student-specific approval for placement when the following have been demonstrated to the State Board of Education:

- 1) The facility demonstrates appropriate certification of teachers for the student population;
- 2) The facility demonstrates age-appropriate curriculum;
- 3) The facility provides enrollment and attendance data;

- 4) The facility demonstrates the ability to implement the child's IEP; and
- 5) The school district demonstrates that it made good faith efforts to place the student in an approved facility, but no approved facility has accepted the student or has availability for immediate placement of the student.

(h) Resident district financial responsibility and reimbursement under Section 147.02 of the School Code [105 ILCS 5/14-7.02] applies for both nonpublic special education facilities that are approved by the State Board of Education pursuant to 23 Ill. Adm. Code 401 or other applicable laws or administrative rules and nonpublic special education facilities that receive emergency and student-specific approval for placement by the State Board of Education pursuant to subsection (g).

(i) When an impartial due process hearing officer contracted by the State Board of Education orders placement of a student with a disability in a residential facility that is not approved by the State Board of Education, for purposes of subsection (g), the facility shall be deemed approved for placement and resident district payments and State reimbursements shall be made accordingly.

(j) Placement in a facility approved pursuant to subsection (g) or (i) may continue to be utilized so long as:

- 1) The student's IEP team determines annually such placement continues to be appropriate to meet the student's needs, and
- 2) At least every 3 years following the student's placement, the IEP team reviews appropriate ISBE-approved facilities under 23 Ill. Adm. Code 401 to determine whether there are any approved facilities that can meet the student's needs, has accepted the student, and has availability for placement of the student.

2. A public school district can be held liable for the costs associated with a parent's unilateral placement in a private program that is not state approved if the school district's placement denied the student a FAPE and the private placement is appropriate. *Florence Cnty. Sch. Dist. Four v. [Student]*, 510 U.S. 7 (1993). In this case, there is no dispute among the parties that the District has been unable to provide the Student with an ISBE-approved residential placement since the November 30, 2021 and, thus, has been unable to provide the Student a FAPE. Moreover, the Parties are in agreement that [REDACTED] is an appropriate residential placement for the Student. (SF #62 and 63)

3. The District and Parents jointly request that this Hearing Officer enter an order placing the Student at [REDACTED] a non-ISBE approved residential facility located in Mapleton, Utah. Based upon the stipulated facts of the District and Parents, as well as the witness affidavits, and the documentary evidence introduced at hearing, it is undisputed that the Student requires placement in a residential facility to meet his unique educational needs. (SF #63.) It is further stipulated and undisputed that the District and Parents have undertaken a search for an appropriate ISBE approved residential facility. However, none exists at this time which are available and appropriate for the Student and can implement his IEP and provide him with a free appropriate public education. (SF #62.) Further, it is stipulated and undisputed that [REDACTED] is an appropriate residential facility which can meet the Student's unique needs, implement his IEP and provide him with a free appropriate public education. (SF #63.) Therefore, as of November 30, 2021, the District is hereby ordered to assume full financial responsibility for all expenses associated with this placement, i.e., tuition, related services expenses associated with the Student's current IEP, if billed separately and room and board. *See Florence County School District Four v. [Student]*, 510 U.S. 7 (1993). The District will pay twice its per capita tuition rate annually and receive ISBE approved reimbursement for the remainder of the associated costs.

CONCLUSION

Based on the above Stipulated Facts, witness affidavits and documentary evidence admitted into evidence, and Conclusions of Law, the Student is currently in need of a residential placement in order to receive FAPE. The District can provide FAPE by funding the Student's placement at [REDACTED] the only program that is currently available and appropriate to meet the Student's needs, implement his IEP and provide him with a free appropriate public education with the District providing Parents reimbursement for said initial placement costs, including tuition and room and board, and funding the placement going forward with ISBE

reimbursement after the District pays twice its per capita tuition rate.

ORDER

Based on the above Stipulated Facts and Conclusions of Law, the Parents are hereby granted the following relief:

- a. The District shall, as the date of this Order, assume full financial responsibility for all expenses associated with the Student's placement at [REDACTED] i.e., tuition, related services expenses associated with the Student's current IEP, if billed separately, and room and board. The District will pay twice its capita tuition rate and receive ISBE reimbursement for the remainder. The District shall also provide necessary transportation from the date of this order. Said expenses are to be paid by the District on a monthly basis within 30 calendar days of receipt of same or by the stated due date of invoices of providers.
- b. The District shall reimburse the Parents for the tuition and room and board Parents' paid to [REDACTED] in the amount of \$66,241.64, due to the unilateral placement of the Student at [REDACTED] beginning November 30, 2021, within 30 calendar days of mailing of this Final Determination & Order. This amount of reimbursement shall be included in the twice per capita tuition rate that the District needs to pay before receiving reimbursement from ISBE.

In accordance with 105 ILCS 5/14-8.02a(h), within **30** school days of receipt of this Order, the school district must submit proof of compliance to:

Illinois State Board of
Education Program
Compliance Division 100
North First Street Springfield,
IL 62777-0001

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h), either party may request clarification of this decision by

submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification must specify the portions of the decision for which clarification is sought. A copy of the request must be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: May 16, 2022

/s/ Mary Jo Strusz
Impartial Hearing Office

[REDACTED]